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Attorneys for Plaintiff Richard S. Bondar,  
As Trustee of the Bondar Family Trust Dated 4/1/91

**UNITED STATES DISTRICT COURT**

**FOR THE NORTHERN DISTRICT OF CALIFORNIA**

RICHARD S. BONDAR, as Trustee of the  
Bondar Family Trust Dated 4/1/91, Individually  
And On Behalf of All Others Similarly Situated,

Plaintiff,

v.

BANK OF AMERICA CORPORATION,  
BANC OF AMERICA INVESTMENT  
SERVICES, INC., and BANC OF AMERICA  
SECURITIES, LLC,

Defendants.

CIVIL ACTION NO. **CV 08-2599**

**CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF  
FEDERAL SECURITIES LAWS**

**SC**

**JURY TRIAL DEMANDED**

**INTRODUCTION**

1. This is a federal class action under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") on behalf of all persons or entities who purchased and continue to hold auction rate securities (also known as auction rate preferred stock, auction market preferred stock, variable rate preferred securities, money market preferred securities, periodic auction rate securities and auction rate bonds) offered for sale by defendants between May 22, 2003 and February 13, 2008, inclusive (the "Class Period").



**PARTIES**

8. Plaintiff Richard S. Bondar, as Trustee of the Bondar Family Trust Dated 4/1/91 ("Bondar Family Trust"), as set forth in the accompanying certification, incorporated by reference herein, purchased auction rate securities underwritten and sold by Defendants during the Class Period and continued to hold such auction securities as of February 13, 2008.

9. Defendant Bank of America Corporation is a North Carolina corporation headquartered in Charlotte, North Carolina. Bank of America Corporation is a bank holding company and a financial holding company registered under the Gramm-Leach-Bliley Act. Bank of America Corporation is one of the world's leading financial firms and one of the largest banks in the United States by assets. Bank of America Corporation conducts substantial business within this District.

10. Defendant Banc of America Investment Services, Inc. ("BAIS"), is incorporated in Florida and its principal executive offices are located in Charlotte, North Carolina. BAIS is registered with the SEC as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the New York Stock Exchange ("NYSE") and the Financial Industry Regulatory Authority ("FINRA"). BAIS is a wholly owned subsidiary of Bank of America Corporation. BAIS conducts substantial business within this District.

11. Defendant Banc of America Securities, LLC ("BAS") is incorporated in Delaware, and its principal executive offices are located in Charlotte, North Carolina. BAS is registered with the SEC as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the New York Stock Exchange ("NYSE") and the Financial Industry Regulatory Authority ("FINRA"). BAS is a wholly owned subsidiary of Bank of America Corporation. BAS conducts substantial business within this District.

12. Unless specifically noted, "Bank of America" refers collectively to Defendants Bank of America Corporation, BAIS and BAS.

**PLAINTIFF'S CLASS ACTION ALLEGATIONS**

13. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons and entities who purchased auction rate securities from Bank of America between May 22, 2003 and February 13, 2008, inclusive, and

1 continued to hold such auction securities as of February 13, 2008 (the "Class"). Excluded from the  
2 Class are defendants, the officers and directors of any defendant, members of their immediate families  
3 and their legal representatives, heirs, successors or assigns and any entity in which any defendant has or  
4 had a controlling interest.

5 14. The members of the Class are so numerous that joinder of all members is impracticable.  
6 The market for auction rate securities, while it existed, was estimated to exceed \$300 billion in the  
7 United States and Bank of America was a significant underwriter and seller of auction rate securities  
8 while the market for such securities existed. While the exact number of Class members is unknown to  
9 plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that  
10 there are thousands of members in the proposed Class. Record owners and other members of the Class  
11 may be identified from records maintained by defendants and may be notified of the pendency of this  
12 action by mail, using the form of notice similar to that customarily used in securities class actions.

13 15. Common questions of law and fact exist as to all members of the Class and predominate  
14 over any questions solely affecting individual members of the Class. Among the questions of law and  
15 fact common to the Class are:

- 16 (a) Whether the federal securities laws were violated by defendants' acts as alleged  
17 herein;
- 18 (b) Whether statements made by defendants to the investing public during the Class  
19 Period misrepresented or omitted material facts about the liquidity of and risks associated  
20 with auction rate securities and the market for such securities; and
- 21 (c) To what extent the members of the Class have sustained damages and the proper  
22 measure of damages.

23 16. Plaintiff's claims are typical of the claims of the members of the Class as all members of  
24 the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is  
25 complained of herein.

26 17. Plaintiff will fairly and adequately protect the interests of the members of the Class and  
27 has retained counsel competent and experienced in class and securities litigation.  
28

1           18. A class action is superior to all other available methods for the fair and efficient  
2 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the  
3 damages suffered by individual Class members may be relatively small, the expense and burden of  
4 individual litigation make it impossible for members of the Class to individually redress the wrongs  
5 done to them. There will be no difficulty in the management of this action as a class action.

6           19. In the alternative, the Class may be certified under the provisions of Fed. R. Civ. P.  
7 23(b)(1) and/or 23(b)(2) because: (a) the prosecution of separate actions by individual Class  
8 members, would create a risk of inconsistent or varying adjudications with respect to individual Class  
9 members which would establish incompatible standards of conduct for defendants; (b) the prosecution  
10 of separate actions by individual Class members would create a risk of adjudications with respect to  
11 them which would, as a practical matter, be dispositive of the interests of other Class members not  
12 parties to the adjudications, or substantially impair or impede their ability to protect their interests; and  
13 (c) defendants have acted or refused to act on grounds generally applicable to the Class, thereby making  
14 appropriate final injunctive relief with respect to the Class as a whole.

15                                   **GENERAL ALLEGATIONS**  
16                                   **Background**

17           20. The term "auction rate security" typically refers to either municipal or corporate debt  
18 securities or preferred stocks which pay interest at rates set at periodic "auctions." Auction rate  
19 securities generally have long-term maturities, typically 30 years, and in the case of preferred stocks, no  
20 maturity date.

21           21. Since then, the market for auction rate securities grew dramatically and the current  
22 estimated value of auction rate securities in existence (prior to the collapse of the auction market) is  
23 around \$350 billion.

24           22. Investments in auction rate securities were initially limited to institutional investors, with  
25 required minimums of \$250,000. In recent years, however, issuers and sellers of auction rate securities  
26 have lowered the minimum amount invested to \$25,000, in an effort to market auction rate securities as  
27 widely as possible to the general public.  
28

1           23. Auction rate securities were auctioned at par value, so the return on the investment to the  
2 investor and the cost of financing to the issuer were determined by the interest rate or dividend yield set  
3 through the auction. The method for auctioning the securities was described in the prospectus of the  
4 fund through which they were offered, though the formula was substantially similar for all securities  
5 offered as auction rate securities.

6           24. The number of days between each auction was set by the prospectus. Generally, the  
7 auctions were held every 7, 28, or 35 days, with interest paid at the end of the auction period.

8           25. The auction itself was of the type commonly referred to as a "Dutch" auction, i.e. one  
9 where the price was initially set at a presumably economically unattractive level and then made more  
10 attractive to purchasers throughout the course of the auction. For auction rate securities, bids with  
11 successively higher rates were offered until all of the securities at the auction were sold.

12           26. At the end of the auction, the rate at which all of the securities were sold was set  
13 uniformly and was called the "clearing rate." The clearing rate was determined by finding the lowest  
14 rate bid which was sufficient to cover all of the securities for sale in the auction. If several bidders had  
15 bids at the clearing rate, and there were more bids than shares, the shares were divided pro-rata between  
16 the clearing rate bidders. The auction agent, at the end of the auction, allocated the shares per the  
17 formula. If all of the current holders decided to hold their securities, then the auction was an "all-hold"  
18 auction and the rate was set at a level defined in the prospectus. This rate was generally lower than the  
19 market rate.

20           27. During an auction, an investor could submit one of four different orders: (1) a Hold order  
21 to keep the shares out of the auction regardless of the new interest rate; (2) a Hold at Rate order, where if  
22 the clearance rate was below the bid to hold rate, then the securities were sold; (3) a Sell order, which  
23 was to sell the shares at the auction regardless of the clearing rate; and (4) a Bid order, to submit a bid to  
24 buy at a new position at a specified minimum interest rate. Since there was no preference in awarding  
25 shares to existing holders and new buyers, there was little practical difference between a Hold at Rate  
26 order and a Buy order.

27           28. If there were not enough orders to purchase all the shares being sold at the auction, a  
28 failed auction occurred. In this situation, the rate was set to a "maximum rate" described by either a



1 formula or a multiplier of a reference rate, such as the Bond Market Association index. Either way, the  
2 maximum rate was set out in the prospectus. If the auction failed then none of the current shareholders  
3 could sell their shares, no matter what type of order they issued. The maximum rate for many auction  
4 rate securities, particularly those invested in corporate debt securities or preferred stocks, was relatively  
5 small, however. As a result, if the auction failed, owners unable to sell their shares would receive  
6 limited interest on their illiquid investments.

7 29. The issuer of each auction rate security selected one or more broker-dealers to underwrite  
8 the offerings and to manage the auction process. Investors could only submit orders through the  
9 selected broker-dealers. The issuer paid an annualized fee to each broker-dealer engaged to manage an  
10 auction.

11 30. Investors were required to submit an order to the broker-dealer by a deadline set by the  
12 broker-dealer. This deadline was generally set early enough by the broker-dealer so that it had time to  
13 process and analyze the orders before having to submit the orders to the auction agent. This gave the  
14 broker-dealer enough time to determine what, if any, orders the broker-dealer wished to place for its  
15 own account.

16 31. Broker-dealers would often engage in a number of practices to influence the auction  
17 process, including, for example, submitting their own orders to purchase or sell shares for their own  
18 accounts. In 2004, the SEC began to investigate these manipulative practices affecting the auction  
19 market. In 2006, the SEC entered into a consent decree with a number of major broker-dealers,  
20 including defendant BAS, which required them to disclose certain practices to investors and to stop  
21 engaging in certain other practices. The SEC consent decree noted that in many cases, the broker-  
22 dealers intervened in auctions for their own benefit rather than to maintain liquidity, as they claimed.  
23 The consent decree did nothing to end the practice of the broker-dealers submitting bids for their own  
24 accounts after receiving notice of what orders their customers planned to place, so long as the broker-  
25 dealers disclosed this practice to their customers.

**During the Class Period, Bank of America Materially Misrepresented  
the Liquidity of and Risks Associated With Auction Rate Securities  
and Omitted Material Facts About Its Role and the Auction Market**

32. Auction rate securities were extremely profitable for Bank of America and for the Bank of America financial advisors and brokers who sold the securities. As a large underwriter of auction rate securities, Bank of America was paid significant underwritten fees by issuers of the securities. As a large broker-dealer, Bank of America was paid to make a market in auction rate securities. Bank of America also acted as a principal for its own account, using its access to inside information about the auction process to buy and sell auction rate securities for its own account. Individual Bank of America financial advisors had a significant financial incentive to sell auction rate securities, as they were compensated by Bank of America for each auction rate security sold.

33. In order to perpetuate the auction market and sell as many auction rate securities as possible, Bank of America represented to investors in its written materials and uniform sales presentations by financial advisors that auction rate securities were the same as cash and were highly liquid, safe investments for short-term investing. Pursuant to uniform sales materials and top-down management directives, Bank of America financial advisors throughout the United States represented to current and potential Bank of America clients that the auction rate securities sold by Bank of America were equivalent to cash or money market funds and were safe, highly liquid short-term investment vehicles suitable for any investor with at least \$25,000 of available cash and as little as one week in which to invest.

34. Bank of America failed to disclose to purchasers of auction rate securities material facts about these securities. Bank of America failed to disclose that these securities were not cash alternatives, like money market funds, and were instead, complex, long-term financial instruments with 30 year maturity dates, or longer. Bank of America failed to disclose that the auction rate securities it was selling were only liquid at the time of sale because Bank of America and other broker-dealers in the auction market were artificially supporting and manipulating the market to maintain the appearance of liquidity and stability. In fact, at all relevant times during the Class Period, the ability of holders of auction rate securities to liquidate their positions depended on the maintenance of an artificial auction market maintained by Bank of America and the other broker-dealers. When Bank of America and the



1 other broker-dealers stopped artificially supporting and manipulating the auction market, the market  
2 immediately collapsed and the auction rate securities sold by Bank of America became illiquid. Bank of  
3 America also failed to disclose that the auction rate securities it was selling were not short-term  
4 investments, but rather long term bonds or preferred stocks with maturities sometimes exceeding 30  
5 years. Finally, Bank of America failed to disclose that the short-term nature of the securities and the  
6 ability of investors to quickly convert their auction rate securities into cash depended entirely on the  
7 perpetuation of the artificial auction market being maintained by Bank of America and the other broker-  
8 dealers.

9 35. Bank of America also failed to disclose to purchasers of auction rate securities material  
10 facts about its role in the auctions and the auction market in which these securities were traded. Bank of  
11 America failed to disclose that in connection with the sale of auction rate securities, Bank of America  
12 simultaneously was acting on behalf of the issuer, who had an interest in paying the lowest possible  
13 interest rate, on behalf of the investor, who was seeking the highest possible return, and on its own  
14 behalf, to maximize the return to Bank of America on its holdings of the auction rate securities. Bank of  
15 America failed to disclose that it and other broker-dealers routinely intervened in auctions for their own  
16 benefit, to set rates and prevent all-hold auctions and failed auctions. Bank of America failed to disclose  
17 that without this manipulation of the auction market, many auctions likely would have failed, as a result  
18 of which investors would have had the ability to determine the true risk and liquidity features of auction  
19 rate securities. Bank of America continued to aggressively market auction rate securities after it had  
20 determined that it and other broker dealers were likely to withdraw their support for the periodic  
21 auctions and that a "freeze" of the market for auction rate securities would result.

22 36. During the Class Period, Bank of America failed to disclose that the auctions it was  
23 conducting were not governed by arms-length transactions but instead suffered from systemic flaws and  
24 manipulative practices, including allowing customers to place open or market orders in auctions,  
25 intervening in auctions by bidding for Bank of America's proprietary account or asking customers to  
26 make or change orders, preventing failed auctions and all-hold auctions to set the market rate,  
27 submitting or changing orders after auction deadlines, not requiring customers to purchase partially-  
28 filled irrevocable orders, providing certain customers with higher returns than the auction clearing rate,

1 and providing inside information about the auction process to certain customers in connection with the  
2 auction bidding.

### 3 **The Market for Auction Rate Securities Collapses**

4 37. In the summer of 2007, some auctions for auction rate securities backed by sub-prime  
5 debt began to fail, but these securities represented only 2-6% of the entire auction rate securities market.  
6 In the fall-winter of 2007, more auctions began to fail. Even though a number of auctions failed in  
7 September 2007 and thereafter, Bank of America continued to encourage investors to purchase auction  
8 rate securities and continued to represent to investors that these securities were the same as cash or  
9 money markets and were highly liquid, safe investments for short-term investing, without any disclosure  
10 of the risks associated with the securities.

11 38. On February 13, 2008, 87% of all auctions of auction rate securities failed when all of the  
12 major broker-dealers refused to continue to support the auctions.

13 39. On February 14, 2008, it was disclosed that UBS, the second largest underwriter of  
14 auction rate securities, had decided to no longer support the auction market. Virtually every other major  
15 broker-dealer, including Goldman Sachs, Lehman Brothers, Citigroup and Merrill Lynch, among others,  
16 also decided around the same time to withdraw their support of the auction market. As a result of the  
17 withdrawal of support by all of the major broker-dealers, the market for auction rate securities has  
18 collapsed, rendering more than \$300 billion of outstanding securities illiquid.

19 40. The market for auction rate securities sold by Bank of America was open, well-developed  
20 and efficient at all relevant times until the truth emerged and the auction market collapsed. As a result  
21 of the materially false and misleading statements and failures to disclose, auction rate securities sold by  
22 Bank of America traded at artificially inflated prices during the Class Period. Plaintiff and other  
23 members of the Class purchased and continued to hold auction rate securities sold by Bank of America  
24 relying upon the integrity of the auction market and the market price of those securities, and have been  
25 damaged thereby.

26 41. During the Class Period, defendants materially misled the investing public, thereby  
27 allowing the auction market to continue and inflating the price of auction rate securities sold by Bank of  
28 America by publicly issuing false and misleading statements and omitting to disclose material facts

1 necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements  
2 and omissions were materially false and misleading in that they failed to disclose material adverse  
3 information and misrepresented the truth about the auction market and the auction rate securities sold by  
4 Bank of America, as alleged herein.

5 42. At all relevant times, the material misrepresentations and omissions particularized in this  
6 Complaint directly or proximately caused or were a substantial contributing cause of the damages  
7 sustained by plaintiff and other members of the Class. As described herein, during the Class Period,  
8 defendants made or caused to be made a series of materially false or misleading statements about the  
9 auction market and the auction rate securities sold by Bank of America. These material misstatements  
10 and omissions had the cause and effect of perpetuating the auction market and creating in that market an  
11 unrealistically positive assessment of the auction rate securities sold by Bank of America, thus causing  
12 those securities to be overvalued and artificially inflated at all relevant times. Defendants' materially  
13 false and misleading statements during the Class Period resulted in plaintiff and other members of the  
14 Class purchasing and continuing to hold auction rate securities sold by Bank of America at artificially  
15 inflated prices, thus causing the damages complained of herein.

16 **NO SAFE HARBOR**

17 43. The statutory safe harbor provided for forward-looking statements under certain  
18 circumstances does not apply to any of the allegedly false statements pleaded in this complaint. The  
19 statements pleaded herein were not identified as "forward-looking statements" when made. To the  
20 extent there were any forward-looking statements, there were no meaningful cautionary statements  
21 identifying important factors that could cause actual results to differ materially from those in the  
22 purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does  
23 apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-  
24 looking statements because at the time each of those forward-looking statements was made, the  
25 particular speaker knew that the particular forward-looking statement was false, and/or the forward-  
26 looking statement was authorized and/or approved by an executive officer of Bank of America who  
27 knew that those statements were false when made.  
28

**LOSS CAUSATION/ECONOMIC LOSS**

44. During the Class Period, as detailed herein, defendants engaged in a scheme and course of conduct to create a market for and artificially inflate the price of auction rate securities sold by Bank of America that operated as a fraud or deceit on purchasers of auction rate securities sold by Bank of America by misrepresenting the liquidity of and risks associated with such securities. Defendants achieved this by making false and misleading statements about the auction market and the auction rate securities sold by Bank of America. When Bank of America's prior misrepresentations and omissions were disclosed and became apparent to the investing public, the market for auction rate securities collapsed and the auction rate securities sold by Bank of America have become illiquid. As a result of their purchases of auction rate securities from Bank of America during the Class Period, plaintiff and other members of the Class suffered economic loss, i.e., damages under the federal securities laws in that the securities have substantially less value than that represented by defendants.

45. The collapse of the auction rate securities market at the end of the Class Period was a direct result of defendants' unilateral decision to no longer artificially support the auction rate securities market and the nature and extent of defendants' fraud finally being revealed to investors.

**BASIS OF ALLEGATIONS**

46. Plaintiff makes the allegations in this Complaint based upon the investigation of plaintiff's counsel, which included a review of SEC filings, regulatory filings and reports, securities analysts' reports, interviews with purchasers of auction rate securities, press releases and media reports, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**COUNT I****Violation Of Section 10(b) Of The Exchange Act  
Against All Defendants**

47. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein. Plaintiff brings this cause of action on behalf of himself, as trustee of the Bondar Family Trust, and the Class.

1           48. During the Class Period, defendants carried out a plan, scheme and course of conduct  
2 which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including  
3 plaintiff and other Class members, as alleged herein; (ii) enable defendants to sell hundreds of millions  
4 of dollars of auction rate securities to current and prospective Bank of America clients, and on which  
5 Bank of America made substantial commissions; and (iii) cause plaintiff and other members of the Class  
6 to purchase auction rate securities from Bank of America at artificially inflated prices. In furtherance of  
7 this unlawful scheme, plan and course of conduct, defendants, jointly and individually (and each of  
8 them) took the actions set forth herein.

9           49. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue  
10 statements of material fact and/or omitted to state material facts necessary to make the statements not  
11 misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and  
12 deceit upon the purchasers of auction rate securities from Bank of America in an effort to maintain  
13 artificially high sales and market prices for such securities in violation of Section 10(b) of the Exchange  
14 Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal  
15 conduct charged herein or as controlling persons as alleged below.

16           50. Defendants, individually and in concert, directly and indirectly, by the use, means or  
17 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous  
18 course of conduct to conceal adverse material information about the auction rate securities sold by Bank  
19 of America, as specified herein.

20           51. These defendants employed devices, schemes and artifices to defraud, while in  
21 possession of material adverse non-public information, and engaged in acts, practices, and a course of  
22 conduct as alleged herein in an effort to assure investors that the auction rate securities sold by Bank of  
23 America were the same as cash and were highly liquid, safe short-term investment vehicles suitable for  
24 almost all investors, which included the making of, or the participation in the making of, untrue  
25 statements of material facts and omitting to state material facts necessary in order to make the statements  
26 made about the auction rate securities in the light of the circumstances under which they were made, not  
27 misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of  
28

1 business which operated as a fraud and deceit upon the purchasers of auction rate securities from Bank  
2 of America during the Class Period.

3 52. The defendants had actual knowledge of the misrepresentations and omissions of material  
4 facts set forth herein, or acted with deliberate disregard for the truth in that they failed to ascertain and to  
5 disclose such facts. Such defendants' material misrepresentations and/or omissions were done  
6 knowingly or deliberately and for the purpose and effect of concealing the truth about the liquidity of  
7 and risks associated with auction rate securities from the investing public and supporting the artificially  
8 inflated price and market for these securities. If defendants did not have actual knowledge of the  
9 misrepresentations and omissions alleged, they were deliberate in failing to obtain such knowledge by  
10 deliberately refraining from taking those steps necessary to discover whether those statements were false  
11 or misleading.

12 53. As a result of the dissemination of the materially false and misleading information and  
13 failure to disclose material facts, as set forth above, the market and market price of the auction rate  
14 securities sold by Bank of America was artificially inflated during the Class Period. In ignorance of the  
15 fact that the market prices of auction rate securities were artificially inflated, and relying directly or  
16 indirectly on the false and misleading statements made by defendants, or upon the integrity of the  
17 auction market in which the auction rate securities were traded, and/or on the absence of material  
18 adverse information that was known to or deliberately disregarded by defendants but not disclosed in  
19 public statements by defendants during the Class Period, plaintiff and the other members of the Class  
20 acquired and continued to hold auction rate securities sold by Bank of America during the Class Period  
21 at artificially high prices and were damaged thereby.

22 54. At the time of said misrepresentations and omissions, plaintiff and other members of the  
23 Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members  
24 of the Class and the marketplace known the truth regarding the liquidity of and risks associated with the  
25 auction rate securities sold by Bank of America, which were not disclosed by defendants, plaintiff and  
26 other members of the Class would not have purchased and continued to hold their auction rate securities,  
27 or, if they had acquired such securities during the Class Period, they would not have done so at the  
28 artificially inflated prices which they paid.





**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

D. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder; and

E. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: May 22, 2008

Respectfully submitted,

**GIRARD GIBBS LLP**

By: 

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9  
10 **Counsel for Plaintiff Richard S. Bondar,**  
11 **As Trustee of the Bondar Family Trust Dated 4/1/91**  
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**CERTIFICATION OF PROPOSED LEAD PLAINTIFF  
PURSUANT TO THE FEDERAL SECURITIES LAWS**

I, Richard S. Bondar, as Trustee of the Bondar Family Trust Dated 4/1/91 ("Bondar Family Trust") declare the following as to the claims asserted, or to be asserted, under the federal securities laws:

1. I am the Trustee of the Bondar Family Trust and am authorized to commence legal action on behalf of the Bondar Family Trust and to seek the Bondar Family Trust's appointment as lead plaintiff in an action brought under the federal securities laws.

2. I have reviewed the complaint against Bank of America Corporation and its affiliates ("Bank of America"), prepared by Girard Gibbs LLP. On behalf of the Bondar Family Trust, I designate Girard Gibbs as counsel for the Bondar Family Trust in this action for all purposes.

3. The Bondar Family Trust did not acquire any auction rate securities from Bank of America at the direction of Girard Gibbs LLP or in order to participate in any private action under the federal securities laws.

4. The Bondar Family Trust is willing to serve as a lead plaintiff either individually or as part of a group. On behalf of the Bondar Family Trust, I understand that a lead plaintiff is a representative party who acts on behalf of other class members in directing the litigation, and whose duties may include testifying at deposition or trial.

5. The Bondar Family Trust will not accept any payment for serving as a representative party beyond its pro rata share of any recovery, except reasonable costs and expenses, such as lost wages and travel expenses, directly related to the class representation, as ordered or approved by the Court pursuant to law.

6. The Bondar Family Trust has not sought to serve or served as a representative party for a class in an action under the federal securities laws within the past three years.

7. On behalf of the Bondar Family Trust, I understand that this is not a claim form, and that the Bondar Family Trust's ability to share in any recovery as a class member is not affected by its decision to serve as a representative party.

8. The Bondar Family Trust's purchases and sales of auction rate securities sold to it through Bank of America during the class period are attached as **Attachment A** to this document.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23<sup>rd</sup> day of April, 2008

  
Richard S. Bondar

**ATTACHMENT A**

**RICK BONDAR'S, AS TRUSTEE FOR THE BONDAR FAMILY TRUST DATED  
4/1/91, TRANSACTIONS IN AUCTION RATE  
SECURITIES SOLD BY BANK OF AMERICA BETWEEN  
APRIL 24, 2003 AND FEBRUARY 13, 2008**

<b>Trade Date</b>	<b>Auction Rate Security</b>	<b>Number of Shares</b>	<b>Price Per Share/Unit</b>	<b>Buy or Sell</b>
September 21, 2007	National Collegiate Student Loan Trust 2007-4 CL A2A4	4	\$25,000	Bought
December 10, 2007	Citizens Property Insurance Corporation Series 2006A-21	4	\$25,000	Bought
January 1, 2008	National Collegiate Student Loan Trust 2007-4 CL A2A4	8	\$25,000	Bought
February 8, 2008	National Collegiate Student Loan Trust 2007-4 CL A2A4	8	\$25,000	Sold
February 11, 2008	South Carolina Student Loan Corp. Series A-4	4	\$25,000	Bought
February 12, 2008	Nelnet Student Loan Trust Series 2003-2	4	\$25,000	Bought
February 28, 2008	Citizens Property Insurance Corporation Series 2006A-21	4	\$25,000	Sold



JS 44 (Rev. 12/07) (and rev 1-16-08)

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

RICK BONDAR, as Trustee of The Bondar Family Trust dated 4/1/91,  
And On Behalf of All Others Similarly Situated

**DEFENDANTS**

BANK OF AMERICA CORP., BANC OF AMERICA INVESTMENT  
SERVICES, INC., BANC OF AMERICA SECURITIES LLC

(b) County of Residence of First Listed Plaintiff Riverside, California  
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

(c) Attorney's (Firm Name, Address, and Telephone Number)

Daniel C. Girard, Jonathan K. Levine, Aaron M. Sheanin  
Girard Gibbs LLP  
601 California Street, 14th Floor, San Francisco, CA 94108  
(415) 981-4800

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)  
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- |   |                            |                            |   |                            |                            |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
|   | PTF                        | DEF                        |   | PTF                        | DEF                        |
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<b>PERSONAL INJURY</b>	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 610 Agriculture Act	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury — Med. Malpractice	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury — Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<b>PRISONER PETITIONS</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input checked="" type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 720 Labor/Mgmt. Relations & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise		<b>Habeas Corpus:</b>	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
		<input type="checkbox"/> 530 General	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<b>REAL PROPERTY</b>	<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 550 Civil Rights	<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare		<input type="checkbox"/> 463 Habeas Corpus — Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment		<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other				
	<input type="checkbox"/> 440 Other Civil Rights				

**V. ORIGIN** (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
15 U.S.C. Sections 78j, 78t; Violation of the Securities Exchange Act of 1934

Brief description of cause:

Private Securities Litigation Reform Act

**VII. REQUESTED IN COMPLAINT:**

☒ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE "NOTICE OF RELATED CASE".

**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)**

☐ SAN FRANCISCO/OAKLAND

☐ SAN JOSE

DATE  
May 22, 2008

SIGNATURE OF ATTORNEY OF RECORD

*Daniel C. Girard*